

Serial No. 10/686,537

REMARKS

Claims 1-10 are pending, with claim 1 being independent. No changes have been made to the application in this paper.

Request for Personal Interview

The applicants believe that a personal interview would be helpful in advancing the prosecution of this application, particularly with respect to the rejections under 35 USC 101. The undersigned attorney, Randall S. Svihla, requested an interview during telephone discussions with the Examiner, Nathan E. Price, and his supervisor, SPE Meng-Ai An, conducted on August 28, 2008. The Examiner and his supervisor asked the attorney to fax an agenda for the interview to the Examiner, which the attorney will do in the next day or two. In any event, it is respectfully requested that the Examiner not act on this Request for Reconsideration After Final Rejection until after the interview has been conducted.

Claim Rejections Under 35 USC 101

Claims 1-10 have been rejected under 35 USC 101 as being directed to non-statutory subject matter. This rejection is respectfully traversed.

The Examiner has set forth two different bases for the rejection under 35 USC 101.

First Basis for Rejection Under 35 USC 101

In explaining the first basis for the rejection under 35 USC 101, the Examiner states as follows on page 4 of the Final Office Action of July 2, 2008:

The computer-readable medium of claim 1 appears to store only nonfunctional descriptive material. See MPEP 2106.01.

First of all, it is not clear whether this first basis for the rejection applies only to claim 1, or also applies to claims 2-10 depending claim 1. It is respectfully requested that the Examiner clarify this in the next Office Action, even if that Office Action is an Advisory Action.

Serial No. 10/686,537

MPEP 2106.01 referred to by the Examiner states as follows in pertinent part on MPEP page 2100-17 (emphasis by underlining added):

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data.

Both types of "descriptive material" are nonstatutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (discussing patentable weight of data structure limitations in the context of a statutory claim to a data structure stored on a computer readable medium that increases computer efficiency) and *In re Warmerdam*, 33 F.3d 1354, 1360-61, 31 USPQ2d 1754, 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory).

The Examiner states as follows on page 2 of the Final Office Action of July 2, 2008, having first presented these arguments on pages 2 and 3 of the Office Action of November 15, 2007:

Applicant's arguments regarding rejections under 35 U.S.C. 101 have been fully considered but they are not persuasive. The computer-readable medium appears to store only nonfunctional descriptive material. The markup document appears to be used when reproducing the AV data, but does not appear to provide reproduction functionality. For example, Figure 6 shows that the markup document is read and the markup document defines display information, but it does not provide reproduction functionality. The control information of claim 1 is not required to include [*sic*] functionality recited in the dependent claims. It

Serial No. 10/686,537

appears that nonfunctional descriptive material (information identifying the buffering state) satisfies the limitation.

It is submitted that the Examiner's statement that "[t]he markup document appears to be used when reproducing the AV data, but does not appear to provide reproduction functionality" is not correct because the AV data cannot be reproduced in the interactive mode without the markup document because it is the markup document that provides the interactivity. Therefore, it is submitted that the markup document does in fact provide reproduction functionality for reproducing the AV data in the interactive mode.

Also, it is submitted that the Examiner's statements that "[t]he control information of claim 1 is not required to include [sic] functionality recited in the dependent claims" and that "[i]t appears that nonfunctional descriptive material (information identifying the buffering state) satisfies the limitation" are not correct because claim 1 recites that the control information "enable[s] the apparatus to identify buffering state information of the markup document to be preloaded into the buffer of the apparatus. Accordingly, it is submitted that the control information of claim 1 does in fact provide functionality recited in the dependent claims, and is in fact functional descriptive material.

Arguments substantially similar to the above arguments were also presented on page 12 of the Amendment of April 10, 2008. However, although the rejection is considered to be improper for at least the reasons discussed above and on page 12 of the Amendment of April 10, 2008, claim 1 was amended to read as follows in the Amendment of April 10, 2008, in an effort to eliminate this issue and advance the prosecution of the application (emphasis added):

1. A computer-readable medium usable with an apparatus comprising a buffer, the computer-readable medium having recorded thereon:

audio video (AV) data;

a markup document to be preloaded into the buffer of the apparatus to enable the apparatus to reproduce the AV data in an interactive mode selected by a user of the apparatus; and

control information to enable the apparatus to identify buffering state information of the markup document to be preloaded into the buffer of the apparatus, the buffering state information being used by the apparatus in reproducing the AV data in the interactive mode selected by the user.

Serial No. 10/686,537

It is submitted that at least the underlined portions of claim 1 impart functionality when the computer-readable medium of claim 1 is employed as a component of the apparatus recited in claim 1. Accordingly, it is submitted that the computer-readable medium of claim 1 stores functional descriptive matter under the guidelines set forth in MPEP 2106.01 relied on by the Examiner, and is therefore directed to statutory subject matter under 35 USC 101.

The above arguments were also presented on page 12 of the Amendment of April 10, 2008. In response to these arguments, the Examiner states as follows on pages 2 and 3 of the Final Office Action of July 2, 2008:

Applicant argues claim 1 recites functional descriptive material. However, the MPEP defines "functional descriptive material" as including computer programs (MPEP 2106.01). There does not appear to be a computer program recited as included on the computer readable medium as required to qualify as function [sic] descriptive material. Although the AV data, markup document, and control information can be used with or by a computer program, none of these are recited as being or including a computer program.

However, what MPEP 2106.01 actually says is that " 'functional descriptive material' consists of data structures and computer programs which impart functionality when employed as a computer component." Thus, "functional descriptive material" is not limited to only computer programs as implied by the Examiner in his statements reproduced above, but also includes data structures. MPEP 2106.01(I) states as follows on MPEP page 2100-18:

[A] claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.

Here, it is submitted that the computer-readable medium having recorded thereon the markup document and the control information recited in claim 1 defines structural and functional interrelationships between (1) a data structure constituted by the markup document and the control information and (2) the apparatus comprising a buffer recited in claim 1 that permit the data structure's functionality to be realized, such that claim 1 and claims 2-10 depending therefrom are statutory under 35 USC 101 pursuant to the statement in MPEP 2106.01(I) reproduced above.

Serial No. 10/686,537

Second Basis for Rejection Under 35 USC 101

In explaining the second basis for the rejection under 35 USC 101, the Examiner states as follows on page 4 of the Final Office Action of July 2, 2008:

Claims 1 – 10 are directed to a signal directly or indirectly by claiming a medium and the Specification (§ 95) recites evidence where the computer readable medium is defined as a "wave" (such as a carrier wave). In that event, the claims are directed to a form of energy, which at present the office feels does not fall into a category of invention.

In response to an identical rejection of claims 1-9 on page 6 of the Office Action of November 15, 2007, paragraph [0095] of the specification referred to by the Examiner was amended as follows in the Amendment of April 10, 2008:

[0095] It is understood that a system which uses the present invention also includes permanent or removable storage, such as magnetic and optical discs, RAM, ROM, ~~a carrier wave medium, etc.,~~ on which the process and data structures of the present invention can be stored and distributed. The operations process and data structures of the present invention can also be distributed via, for example, downloading over a network such as the Internet, or transmitted via a carrier wave.

Thus, as pointed out on pages 13 and 14 of the Amendment of April 10, 2008, paragraph [0095] was amended to delete "a carrier wave medium" from the examples of "permanent or removable storage," and to recite instead that "[t]he process and data structures of the present invention can also be distributed via, for example, downloading over a network such as the Internet, or transmitted via a carrier wave."

In response to these arguments, the Examiner states as follows on page 3 of the Final Office Action of July 2, 2008:

Regarding Applicant's amendment to the specification, although Applicant indicates the amendment addresses the rejection under 35 USC 101, Applicant has not specifically disavowed the disclosure that precedes the amendment. Additionally, the amendment removes carrier wave from the examples of storage media, but it is not clear that carrier wave is not disclosed as an example of a computer readable medium.

Serial No. 10/686,537

It is not understood what the Examiner means by "although Applicant indicates the amendment [to paragraph [0095] of the specification] addresses the rejection under 35 USC 101, Applicant has not specifically disavowed the disclosure that precedes the amendment," and it is respectfully requested that the Examiner explain what he means in the next Office Action, even if that Office Action is an Advisory Action.

Furthermore, with respect to the Examiner's statement that "the amendment removes carrier wave from the examples of storage media, but it is not clear that carrier wave is not disclosed as an example of a computer readable medium," the term "computer[-]readable medium" appears in the application as originally filed only in paragraph [0033], which as follows:

[0033] To achieve the above and/or other aspect of the present invention, there is provided a computer readable medium encoded with operating instructions for implementing one or more methods disclosed above, performed by a computer.

In contrast, the term "carrier wave" appears only in paragraph [0095] of the specification, which, as discussed above, was amended to delete "a carrier wave medium" from the examples of "permanent or removable storage" in the Amendment of April 10, 2008. In light of this, it is not understood why the Examiner has stated that "it is not clear that carrier wave is not disclosed as an example of a computer readable medium."

The second basis for the rejection under 35 USC 101 is that "[c]laims 1 – 10 are directed to a signal directly or indirectly by claiming a medium and the Specification (§ 95) recites evidence where the computer readable medium is defined as a 'wave' (such as a carrier wave)" However, it is submitted that paragraph [0095] of the specification no longer recites such evidence, and that no other portion of the specification recites such evidence, such that there is no longer any basis for the rejection. Accordingly, it is submitted that claims 1-10 are statutory under 35 USC 101.

Conclusion—Claim Rejections Under 35 USC 101

For at least the foregoing reasons, it is respectfully requested that the rejection of claims 1-10 under 35 USC 101 be withdrawn.

However, should the Examiner refuse to withdraw the rejection because a TQAS in Technology Center 2100 has required the Examiner to maintain the rejection, it is respectfully

Serial No. 10/686,537

requested that the Examiner provide the name of the TQAS in the next Office Action, even if that Office Action is an Advisory Action.

Furthermore, should the Examiner refuse to withdraw the rejection, it is respectfully requested that the Examiner explain how the rejection can be overcome, particularly with respect to the "carrier wave" basis for the rejection, in the next Office Action, even if that Office Action is an Advisory Action

Claim Rejections Under 35 USC 102

Claims 1, 2, 5, and 8-10 have been rejected under 35 USC 102(b) as being anticipated by Sullivan et al. (Sullivan) ("Programming with the Java Media Framework"). This rejection is respectfully traversed.

Claim 1

It is submitted that Sullivan does not disclose "a markup document to be preloaded into the buffer of the apparatus to enable the apparatus to reproduce the AV data in an interactive mode selected by a user of the apparatus" as recited in independent claim 1.

The Examiner states as follows on page 5 of the Final Office Action of July 2, 2008:

As to claim 1, Sullivan teaches

. . . .

a markup document to be preloaded into the buffer of the apparatus to enable the apparatus to reproduce the AV data in an interactive mode selected by a user of the apparatus (p. 75 ¶ 1 – 2; p. 78 ¶ 1 – 3; p. 79 ¶ 1 – 3; Fig. 9.2).

Page 75 of Sullivan discloses a Java applet known as VideoApplet that plays a video file. Page 78 of Sullivan discloses an applet known as ScriptableMediaApplet that plays a video file, and is designed to be scriptable by JavaScript. However, the Examiner has not identified where pages 75 and 78 of Sullivan disclose "an interactive mode" as recited in claim 1. Both VideoApplet and ScriptableMediaApplet have a parameter "controlpanel" that determines whether or not a VCR control panel should be displayed. Page 79 of Sullivan states that "[o]n a web page, it is easy to add HTML FORM buttons that start and stop the video." Assuming

Serial No. 10/686,537

arguendo that these portions of Sullivan may be considered to disclose "an interactive mode" as recited in claim 1, it is submitted that this interactive mode is not "an interactive mode selected by a user of the apparatus" as recited in claim 1 because a user of the apparatus has no control over whether the VCR control panel is displayed or whether the HTML FORM buttons that start and stop the video are provided. Rather, this decision is made by the programmer.

The above arguments were also presented on page 14 of the Amendment of April 10, 2008. In response to these arguments, the Examiner states as follows on page 3 of the Final Office Action of July 2, 2008:

Applicant's arguments regarding rejections under 35 U.S.C. 102 have been fully considered but they are not persuasive. Applicant argues Sullivan fails to teach a user making a selection as claimed. However, the user selects to use the browser and what to view with the browser (p. 78 ¶ 2 – 3; p. 79 ¶ 1 – 3; Fig. 9.2). The user can control the media and browser, making the environment interactive. This interpretation appears to be consistent with the specification (¶ 6,82).

The Examiner is apparently referring to paragraphs [0006] and [0082] of U.S. Patent Application Publication No. 2004/0139395, which is a publication of the present application. However, the U.S. Patent and Trademark Office renumbered these paragraphs during the printing of the publication. Paragraphs [0006] and [0082] of the publication correspond to paragraphs [0004] and [0060] of the specification as originally filed, which is in the image file wrapper of the application. In the future, to avoid confusion, it is respectfully requested that the Examiner refer only to the paragraph numbers of the specification as originally filed.

Paragraph [0004] of the specification as originally filed corresponding to paragraph [0006] of the publication reads as follows (emphasis added):

[0004] Where a user selects an interactive mode, a web browser installed in a DVD player displays the markup documents recorded on the interactive DVD. Content selected by the user is displayed through the display window defined by the mark-up documents. For example, where the content is a movie title, a movie is displayed in the display window on a screen, and various pieces of additional information, for example, the scenario, synopsis, and actors' and actresses' photos, may be displayed on the rest of the screen. Such additional information includes image files or text files.

Serial No. 10/686,537

Paragraph [0060] of the specification as originally filed corresponding to paragraph [0082] of the publication reads as follows (emphasis added):

[0060] FIG. 6 illustrates a method of reproducing data from a data storage medium. In operation 601, the reader 1 reads an HTML document, which is a markup document recorded on the DVD 300, from the DVD 300 where an interactive mode is selected. In operation 602, the presentation engine 5 interprets preload information included in the HTML document and requests that the reader 1 or an Internet server preload files. In response to the request, files to be preloaded are stored in the second memory 3 in operation 603.

Thus, paragraphs [0004] and [0060] of the specification as originally filed disclose that the user selecting the interactive mode causes other things to happen, i.e., causes a web browser installed in a DVD player to display the markup documents recorded on the interactive DVD as described in paragraph [0004], and causes the reader 1 to read an HTML document, which is a markup document recorded on the DVD 300, from the DVD 300 as described in paragraph [0060].

In contrast, under the Examiner's interpretation of Sullivan, the user selecting "to use the browser and what to view with the browser" causes the interactive mode to be selected. This interpretation is consistent with the Examiner's statement that "[t]he user can control the media and browser, making the environment interactive."

Thus, under the Examiner's interpretation of Sullivan, the selecting of the interactive mode is a result of something else, whereas in paragraphs [0004] and [0060] of the specification as originally filed, the selecting of the interactive mode is a cause of something else, which is the opposite of what happens under the Examiner's interpretation of Sullivan. Thus, the Examiner's interpretation of Sullivan is not in fact consistent with paragraphs [0004] and [0060] of the specification as originally filed as alleged by the Examiner.

Pages 75, 78, and 79 of Sullivan teach a programmer how to add video to a web page using VideoApplet or ScriptableMediaApplet, and how to display a VCR control panel or HTML FORM buttons to stop and start the video on the web page to enable a user to control playback of the video. Pages 75, 78, and 79 of Sullivan do not teach the programmer how to give the user the option of selecting an interactive mode. If the programmer chooses to display the VCR control panel or the HTML FORM buttons to start and stop the video on the web page, then the

Serial No. 10/686,537

user will be able to control playback of the video. If the user does not want to have the VCR control panel or the HTML FORM buttons to start and stop the video displayed on the web page, there is absolutely no way for the user to turn off the display of the VCR control panel or the HTML FORM buttons to start and stop the video on the web page. If the programmer chooses not to display the VCR control panel or the HTML FORM buttons to start and stop the video on the web page, the user will not be able to control playback of the video. The user has absolutely no control over whether the VCR control panel or the HTML FORM buttons to start and stop the video will be displayed when the user opens the web page. Furthermore, before the user opens a web page, there is absolutely no way for the user to know whether the web page will display the VCR control panel or the HTML FORM buttons to start and stop the video when it is opened. If the web page does not display the VCR control panel or the HTML FORM buttons to start and stop the video after the user opens the web page, there is absolutely no way for the user to turn on the display of the VCR control panel or the HTML FORM buttons to start and stop the video on the web page. In fact, before the user opens a web page, there is absolutely no way for the user to know whether the programmer has added a video to the web page using VideoApplet or ScriptableMediaApplet. If the user discovers that the programmer has not added a video to the web page after the user opens the web page, there is absolutely no way for the user to add a video to the web page.

It is submitted that in order for a user to be able to select an interactive mode, the user must be given the ability to select the interactive mode. However, it is submitted that pages 75, 78, and 79 of Sullivan relied on by the Examiner do not teach the programmer how to give the user the ability to select an interactive mode.

The Examiner's theory appears to be that a user selecting to use a browser and selecting what to view with the browser will result in the user selecting an interactive mode if what the user happens to select to view with the browser is a web page to which a programmer has added a video using VideoApplet or ScriptableMediaApplet and has specified that the VCR control panel or the HTML FORM buttons to start and stop the video are to be displayed on the web page as described on pages 75, 78, and 79 of Sullivan. However, this alleged selection of the interactive mode will occur purely by chance. What the user actually selects is to use a browser and what to view with the browser. If the user wants to select the interactive mode, there is absolutely no way for the user to do so, because there is absolutely no way for the user to know in advance which web pages will display the VCR control panel or the HTML FORM buttons to start and stop

Serial No. 10/686,537

the video when they are opened. Thus, all the user can do is to keep opening web pages at random until the user happens to find one that displays the VCR control panel or the HTML FORM buttons to start and stop the video when it is opened. Accordingly, it is submitted that the Examiner's interpretation that this random process somehow provides the feature "an interactive mode selected by a user of the apparatus" is an unreasonable interpretation that is contrary to how this feature would be interpreted by one of ordinary skill in the art.

Accordingly, for at least the foregoing reasons, it is submitted that Sullivan does not disclose "a markup document to be preloaded into the buffer of the apparatus to enable the apparatus to reproduce the AV data in an interactive mode selected by a user of the apparatus" as recited in claim 1.

Claim 8

It is submitted that Sullivan does not disclose the following feature of dependent claim 8:

wherein the AV data is selectable by the user to be viewed by the user while the AV data is reproduced in the interactive mode selected by the user.

The Examiner states as follows on page 6 of the Final Office Action of July 2, 2008:

As to claim 8, Sullivan teaches the AV data is selectable by the user to be viewed by the user while the AV data is reproduced in the interactive mode selected by the user (p. 78 ¶ 2 – 3; p. 79 ¶ 1 – 3; Fig. 9.2).

Pages 78 and 79 of Sullivan teach a programmer how to add video to a web page using ScriptableMediaApplet, and how to display a VCR control panel or HTML FORM buttons to stop and start the video on the web page to enable a user to control playback of the video. The Examiner apparently considers this video to be "AV data" as recited in claim 8. However, it is submitted that the video is not "selectable by the user" as recited in claim 8 because the video was selected by the programmer and will always appear when the user opens the web page. It is submitted that something that is always present cannot be "selectable" as recited in claim 8 because the ordinary meaning of "selectable" implies a choice, and there is no choice when something is always present.

Serial No. 10/686,537

Claim 10

It is submitted that Sullivan does not disclose or suggest the following features of dependent claim 10:

the interactive mode is a mode in which the AV data is displayed in a display window defined by the markup document;

the apparatus is selectively operable in the interactive mode in which the AV data is displayed in the display window defined by the markup document, and a non-interactive video mode in which the AV data is displayed in the same manner as AV data recorded on a standard DVD; and

the user of the apparatus selects between the interactive mode and the non-interactive video mode.

The Examiner states as follows on pages 6 and 7 of the Final Office Action of July 2, 2008:

As to claim 10, Sullivan teaches:

the interactive mode is a mode in which the AV data is displayed in a display window defined by the markup document (p. 78 ¶ 2 – 3; p. 79 ¶ 1 – 3; Fig. 9.2);

the apparatus is selectively operable in the interactive mode in which the AV data is displayed in the display window defined by the markup document, and a non-interactive video mode in which the AV data is displayed in the same manner as AV data recorded on a standard DVD (p. 77 ¶ 1 – 3; p. 78 ¶ 2 – 3; p. 79 ¶ 1 – 3; Fig. 9.1; Fig. 9.2); and

the user of the apparatus selects between the interactive mode and the non-interactive video mode (p. 77 ¶ 1 – 3; p. 78 ¶ 2 – 3; p. 79 ¶ 1 – 3; Fig. 9.1; Fig. 9.2).

The Examiner apparently considers FIG. 9.1 of Sullivan to show "a non-interactive video mode in which the AV data is displayed in the same manner as AV data recorded on a standard DVD" as recited in claim 10, and considers FIG. 9.2 of Sullivan to show "[an] interactive mode in which the AV data is displayed in the display window defined by the markup document" as recited in claim 10.

FIG. 9.1 of Sullivan shows VideoApplet running in the JDK Appletviewer, where JDK stands for "Java Development Kit," and displaying the video "example.avi" with a width=400 and a height=400. FIG. 9.2 of Sullivan shows ScriptableMediaApplet running in a web page

Serial No. 10/686,537

displayed in Microsoft Internet Explorer and displaying the same video "example.avi" that is displayed in FIG. 9.1 with a width=168 and a height=148. However, it is submitted that nothing whatsoever in Sullivan discloses that the user can select between the alleged non-interactive mode shown in FIG. 9.1 and the alleged interactive mode shown in FIG. 9.2 as would be necessary for Sullivan to arguably disclose the feature "the user of the apparatus selects between the interactive mode and the non-interactive video mode" recited in claim 10. Rather, FIGS. 9.1 and 9.2 of Sullivan are two completely different examples of two complete different web pages showing how a programmer can add a video to a web page using VideoApplet and ScriptableMediaApplet.

Accordingly, for at least the foregoing reasons, it is submitted that Sullivan does not disclose the feature "the user of the apparatus selects between the interactive mode and the non-interactive video mode" recited in claim 10.

Conclusion—Claim Rejections Under 35 USC 102

For at least the foregoing reasons, it is respectfully requested that the rejection of claims 1, 2, 5, and 8-10 (i.e., claims 1, 8, and 10 discussed above and claims 2, 5, and 9 depending from claim 1) under 35 USC 102(b) as being anticipated by Sullivan be withdrawn.

Claim Rejections Under 35 USC 103

Claims 3, 4, 6, and 7 have been rejected under 35 USC 103(a) as being unpatentable over Sullivan. This rejection is respectfully traversed.

Although the propriety of this rejection is not conceded, it is submitted that dependent claims 3, 4, 6 and 7 depending directly or indirectly from claim 1 are patentable over Sullivan for at least the same reasons discussed above that claim 1 is patentable thereover.

For at least the foregoing reasons, it is respectfully requested that the rejection of claims 3, 4, 6, and 7 under 35 USC 103(a) as being unpatentable over Sullivan be withdrawn.

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Serial No. 10/686,537

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Conclusion

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with the filing of this paper, please charge the same to our Deposit Account No. 503333.

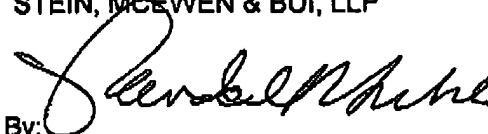
Respectfully submitted,

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